

**BROWNFIELDS STUDY GROUP  
MEETING  
SEPTEMBER 23, 2003**

**I. Attendees**

Kenn Anderson, Arthur J. Gall. Risk Mgt.  
John Antaramian, City of Kenosha  
Sue Bangert, DNR  
Gary Becker, Vierbicher & Assoc.  
Tom Bergamini, BT2  
Loren Brumberg, DNR  
Margaret Brunette, DNR  
John Burnett, DNR  
Laurie Egge, DNR  
Jim Fendrick, ATC Assoc.  
Darsi Foss, DNR  
Nancy Frank, UW-Milwaukee  
Judie Gibbon, Dept. of Revenue  
Mark Giesfeldt, DNR  
Maureen Hubeler, DNR  
Bruce Keyes, Foley & Lardner  
Larry Kirch, City of LaCrosse

Dan Kolberg, DNR  
Tom Kroeger, STS Consultants  
Kate Mawdsley, DOA  
Dave Misky, City of Milwaukee  
Tom Mueller, TEMCO  
Peter Peshek, DeWitt Ross & Stevens  
Michael Prager, DNR  
Derek Price, Weston Solutions  
John Robinson, DNR  
Andrew Savagian, DNR  
Jason Scott, Dept. of Commerce  
Al Shea, DNR  
John Stibal, City of West Allis  
Joy Stieglitz, Vandewalle & Assoc.  
Bob Strous, DNR  
Scott Wilson, Ayres Assoc.

**II. Welcome, Introductions, Agenda Repair**

**III. 2003-05 Biennial Budget Update**

RR Program

Mark Giesfeldt gave a brief update on the budget signing: there were some cuts to the DNR; the RR Program had 108 people statewide, with the majority of staff in the field; the governor's original budget eliminated 7 positions and RR has done that; the Legislature proposal moved funds to DATCP, and while the governor vetoed that, those funds don't automatically come back to the program; we still face potential cuts in the Fiscal Year 2004-2005, upwards of 23.5 positions in the division which would come from the Waste and RR programs; however, RR Program was able to offset the cuts in this fiscal year by obtaining federal funds; the RR Program may face additional cuts in FY '05, if funding and positions can't be restored by July 1, 2004

Tom Mueller: What's our timing on this, DNR does have the EPA grant, correct?

Giesfeldt: We don't officially have the money in hand yet, but we're assuming we'll have that money and that will offset the 10 positions

Mueller: The money [that the Legislature transferred and the governor vetoed] is still there; they're in escrow or where are they?

Giesfeldt: They're sitting there; those funds could be potentially used to offset a layoff, we just don't know; there may also be a budget repair bill that this money could go for

Mueller: At least for this fiscal year, we're not literally losing bodies?

Giesfeldt: We've lost 7 positions in the program, we're down to 101; 5 of those we're vacant, but we lost 2, and we're losing some due to bumping and seniority

Loren Bruberg: For the EPA Subtitle C grant, do we need to apply every year? Will this money be available in the future?

Giesfeldt: Yes you need to apply every year; there is also legislation currently to increase this funding from \$50 million to \$60 million

John Antaramian.: Do we know where the governor is on brownfields? The reason I bring it up, we may want a small group to meet with his staff and himself and bring him up to speed on this issue; that's the first step I'd recommend; we've got two years; and it should be non-bureacrats and some business people that can show some successes; next thing we do is meet with leadership in both parties; and the tough part will be to meet with Joint Finance; it's not that I think they're against the programs, it's just they probably don't know alot about them – we need champions, we used to have them, but don't anymore

Peter Peshek: The governor did mention environmental issues in his Grow Wisconsin Plan, but that only reinforces John's point; when groundwater quantity is listed as a job creation issue but the governor's office did not pick brownfields; I think clearly Sen. Panzer and others have been major proponents, but we need to re-connect

Bruce Keyes: I agree, but I think we need a better sense of the target; is there anything other than that we need to focus on, are there other funds, user fees, etc., we need to look at?

Giesfeldt: the federal funds have helped; however the traditional Superfund grants that have funded the program, those are going down in funding; the monies available are less; so we could lose those dollars as the years go by; we also have 12 positions funded from user fees; however, based on projections, it's possible that in the next 2-3 years we may not be able to fund 3-5 of those positions due to decreases in fees

Mueller: For the DNR layoffs, RR is taking a pretty big hit proportionally, and I think that's something we need to highlight as well

Antaramian: The other part of the problem is, for example from my vantage point, I just lost the young woman who was doing work for me, and now it has to be transferred to someone else; so we're losing DNR people who are skilled in this area

Peshek: I will work with others to get this done; our message is bipartisan; jobs are created in very small batches but they are created and we have to get that message out; this bureau is about jobs and the environment and that's a win-win

Keyes: In identifying long-term funding sources, is there an opportunity to get one of the legislative fiscal arms to do an evaluation of potential funding sources?

Antaramian: Should I ask Panzer to request that?

**Study Group members agreed to work with Peshek and Keyes on setting up meetings with legislators, and present a letter with supporting materials to these meetings; and to have Antaramian talk to Sen. Panzer's office about doing an evaluation of funding sources**

Kate Mawdsley: The funding that was vetoed by the governor is there, but the DNR does not have the expenditure authority; a request for expenditure authority can come back in a 13.10 request to Joint Finance or in the next budget session

Darsi Foss: There was a paper done by Bill Ford of the Legislative Council's legal staff as part of the old Burke-Panzer committee that might be helpful in the discussion

Mueller: Darsi came and talked to the WEDA Committee meeting; and I think that continuing that type of discussion back and forth is also helpful

#### Commerce Brownfields Programs

Jason Scott: \$6.2 million was restored and we're now in the process of awarding that; as for the budget cuts, some positions were eliminated, but people were not, the only position that had a direct impact on Brownfields work with Commerce was we lost Joe Leo who left for law school; Joe did BEBR, and right now they're trying to decide how to fill that position

Keyes: As I understand it, we're happy because the money was restored, but is there a sense that the money is not in jeopardy? We need to make sure they know that money is important for brownfields and won't be taken away

Mawdsley: I haven't heard anything more, but the possibility is definitely out there

Keyes: There's a disproportionate amount that goes to small communities [through the Commerce brownfields grants], I don't know if we're going to change that, but as an alternative, look at where the block grant money would be viable, and if it is, have it count under the awards to small communities, thereby increasing the pool of larger \$\$ to larger communities

Scott: I don't think the agency would object to that

Antaramian: I think you have to be sensitive to the issue of perspective; looking federally, Kenosha is considered small by national standards; needing to balance rural and urban interests is something to keep in mind

#### **Study Group agreed to work on that issue with Jason Scott and Bruce Keyes in the future**

Mark Giesfeldt introduced Al Shea, the DNR's new Air and Waste Division Administrator; a smaller group of Study Group members will be meeting with Al at a later date

#### **IV. Brownfields Policy Legislation Update**

Foss: From the 2000 Study Group's Final Report, policy recommendations from there were pulled from the biennial budget and have been tabled until now; I met with staff from senators Panzer and Roessler office, they are drafting legislation based on the chart the Study Group put together and sent to the Legislature

Peshek: Do you think they need a formal recommendation from our group?

Foss: Yes, when they are ready to introduce the bill at committee

Study Group also discussed the governor's Grow Wisconsin Plan; members agree it has some reference to brownfields but doesn't necessarily tie enough information into the importance of brownfields and economic development

John Stibal: Should we weigh in as a group on the Grow WI Plan? The governor is visiting West Allis and we can tie into it that way

Scott: As an FYI, Commerce is proposing standards on how to use the additional tax credits; there four left out of the original 10 tax credit zones

Antaramian: It might be helpful to ask DNR staff to attend these events to help educate them about what's happening

Joy Stieglitz: We had talked about this at previous meetings, we could put packages together to bring to these meetings

**Study Group agreed to put together letters to send to the Governor, DOA, etc., on the Grow Wisconsin Plan; also, per the Study Group's request, DNR will send additional information on the plan to the Study Group via email**

## **V. PROPOSED BROWNFIELDS INSURANCE PROGRAM IN WISCONSIN**

Michael Prager and Kenn Anderson gave a brief overview of the program; program is entitled the Wisconsin Brownfields Environmental Liability Insurance Program (WBELIP); Kenn summarized the document sent out via email to the Study Group; to view this document on line, please go to <http://www.dnr.state.wi.us/org/aw/rr/rbrownfields/bsg/index.htm>

Kenn: We want this program to be financially sound; our rate of choice is an 'A' rating; also, the insured party is the individual entity doing the cleanup, and we want the program to be flexible to offer additional insured parties (e.g. lenders, new owners, etc.); for third party liability exposures, we see two categories of sites: 1) there's a site in the VPLE or closure process that includes state approval, i.e. review of phase 1 and phase 2's, etc.; and 2) sites that may already be closed, e.g. tanks, and owner wants protection in case someone comes back to sue, i.e. third party

Kenn also went over the type of coverage the program would provide and the policy terms; members asked a wide variety of questions, including the lack of coverage to address any increases in the volume of contamination, where in the process a party would want to purchase the insurance, and how certain category of sites were defined

Keyes: Massachusetts and Wisconsin are structured differently, so won't that bias insurers for Wisconsin's coverage because of some of the bad things that have happened with Massachusetts?

Kenn: It might, but it might benefit Wisconsin, due to the experiences of the insurers with the VPLE insurance and the design of the Wisconsin voluntary cleanup program

Peshek: Does it cover river sediments?

Foss: Peter raises a good point, how this relates to the mega-sites; we need to research this and talk to the insurance providers on large sites like sediments – e.g. Fox River and Sheboygan

Prager: It may be more challenging for sediment sites to meet the program requirements

Giesfeldt: You might want to look at the coal gas plant issue

Brumberg: Who's the insured party? State?

Kenn: No, it'll vary; it could be the lender, developer, seller, buyer, etc.

**While Kenn indicated underwriters may not be able to provide cost cap for a reasonable cost, the Study Group asked Kenn to add the cost cap process to the design document to see what the insurers can provide**

**Once Kenn gets all the comments incorporated, he'll send out the proposal to potential underwriters and talk with them in the next 2-4 weeks; DNR field staff will also be solicited for input before there are any final proposals submitted by potential underwriters; a program could be ready to go by January 1**

## **LUNCH**

### **VI. State Grant Time Lines and Funding News**

#### Commerce Brownfields Grants

Scott: We have a draft list of awardees from last spring – 35 applicants; gave them one month to update their project and financial need; then we'll finish the funding list; we plan on awarding 14 grants and \$6.25 million; there will also be \$750,000 in new applications made available, and then \$7 million available in the second year of biennium

Scott: For the Blight Elimination and Brownfields Redevelopment (BEBR) grants, these are rolling grants, with \$5 million/biennium as a cap; \$100,000 for site assessment and \$500,000 for clean up; as mentioned earlier, Bruce Keyes and Jason will put together a proposal on BEBR and the Commerce brownfields grants related to the grant criteria of seven communities under 30,000 in population

#### DNR Grants and Loans

Prager: For Site Assessment Grants, applications will be out by November 1, with \$1.7 million in funds available, and will be due by early January; any rule changes for SAG will affect the funds and grants in FY 2005, i.e. funds that are for use after July 1, 2004

Prager: For Green Space grants, the DNR received \$1.9 million in funding requests (Green Space has \$1 million to give out); DNR is checking with communities to see if they still need the funds

Foss: We're looking for feed back on how to award money – should we give out half each fiscal year, or all given out now?

Stibal: Are these the kind of projects we want to fund or not? If "yes" then give it all out and then tell of the success

**Study Group members agreed with Stibal that DNR should give out the entire funds if the projects meet the proper criteria for Green Space grants**

Maureen Hubeler: For Land Recycling Loans, there are no new funds in the biennium; DNR has \$10 million left in this biennium, and the goal is to use the remaining funds

Hubeler also handed out list of current grants and those parties that have sent in Intent To Apply forms (ITAs)

## **VII. Federal Updates**

### EPA Brownfields Grants

Laurie Egre: For EPA grants, there is \$100 million available nationwide; application deadline is in early December; will be a one step process this year; there are three types of grants – assessment; revolving loan, and cleanup grants

Egre: For the federal EPA revolving loan, the DNR is applying; we'll be hooking it to SAG sites

**Study Group inquired as to the status of the Federal Tax deduction; with it set to sunset at the end of 2003, members agreed they'd like to see it continue, and will work with DNR staff to contact Charlie Bartsch (Northeast-Midwest Institute) to draft a letter of support from the Study Group**

### EPA One Cleanup Program

Percy Mather briefly went over EPA and DNR cooperation on EPA's One Cleanup Program proposal/MOA – RCRA, TSCA, Superfund overlap with DNR roles and responsibilities

### EPA All Appropriate Inquiry

John Burnett also briefly went over EPA's All Appropriate Inquiry, which included a hand out; innocent landowner, contiguous property, or bona fide prospective purchaser would need to do all appropriate inquiry; not just an issue for private transactions, but for grants as well; to view this hand out, please go to <http://www.dnr.state.wi.us/org/aw/rr/brownfields/bsg/index.htm>

## **VIII. Other Issues**

### Location and Retention of Agencies' Site Cleanup Files

John Robinson introduced the issue: this applies to all state agencies overseeing environmental cleanups; are the files at the agencies? For how long? Are there consistent policies across agencies? If so, how quickly can you get access to them?

**Members requested the DNR and Commerce come back to the study group with an issue paper, which would include what retention and access policies exist across state agencies**

### TIF Reform Proposals

Gary Becker, a member of the Wisconsin Economic Development Association (WEDA), presented WEDA's recommendations on modifying TIFs to be more useable, especially for older parts of the community; his hand out on these recommendations is available on line at <http://www.dnr.state.wi.us/org/aw/rr/brownfields/bsg/index.htm>

Stibal: There are some good things in WEDA's proposal that we should support; don't like the parts that may support sprawl projects

Keyes: I agree with John on both points

**Study Group agreed to continue dialogue with WEDA on points of agreement and difference on TIF issues**

**Study Group agreed to table the following issue until the next meeting:**

- WI Supreme Court Decision on Johnson Controls
- Lender exemptions
- EPA's policy on PCBs and land transactions
- Selling delinquent taxes

**Study Group Adjourned**

**DNR BROWNFIELDS SITE ASSESSMENT GRANT (SAG) RULE REVISIONS**

[NOTE: some Study Group members remained for this discussion]

Michael Prager went over the SAG rule changes, summarized below; for a copy of the draft rule revisions discussed at the meeting, please go to [http://www.dnr.state.wi.us/org/aw/rr/wi\\_regs/index.htm#anchor74198](http://www.dnr.state.wi.us/org/aw/rr/wi_regs/index.htm#anchor74198)

**Rule Language**

(c) past cost – discussed the elimination of acquisition costs as past costs; still would get 20 points for acquisition; folks were going to think about this one

(d) not overly fond of getting rid of 50%; Stibal liked the idea of substituting “multiple” rounds for the “must give out 50% per year”

(e) Mueller: put more competition back in small grants; go with the 40/60 split

(f) ok with group

(g) ok with group

(h) Stibal: be flexible and allow old resolutions if they're for the project; put sample resolution in the rule; no concerns with other requirements

(i) ok

(j) ok

(k) ok

(l) ok

(m) members seemed ok with recommendation to get rid of \$2,500 in PECFA costs for site investigations

(n) Stibal: get rid of the limit on local grants; figure out how to deal with the federal contributions; use federal grant as match? Can we allow this?

(p) members agreed they can live with 60 days notice

**Grant Scoring**

Michael Prager summarized proposed changes to the scoring system in the document; no strong support or opposition to changes were expressed by the Study Group members in attendance